

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

- against -

MEMORANDUM AND ORDER
13-CR-386 (RRM)

CHOUDRY KHALIL,

Defendant.

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ROSLYNN R. MAUSKOPF, United States District Judge.

Before the Court is defendant Choudry Muhammad Khalil's motion to proceed on appeal *in forma pauperis*. For the reasons described below, the motion is denied.

After a jury trial held before this Court between April 20 and May 1, 2015, defendant was found guilty of (1) conspiracy to engage in alien smuggling, in violation of 8 U.S.C. § 1324; (2) conspiracy to transport an alien within the United States, in violation of 8 U.S.C. § 1324; (3) alien smuggling, in violation of 8 U.S.C. § 1324; (4) transporting an alien within the United States for financial gain, in violation of 8 U.S.C. § 1324; (5) harboring an alien for financial gain, in violation of 8 U.S.C. § 1324; (6) conspiring to transfer false identification documents, in violation of 18 U.S.C. § 1028; (7) two counts of transferring false identification documents, in violation of 18 U.S.C. § 1028; and (8) two counts of making false statements to federal agents, in violation of 18 U.S.C. § 1001. While defendant was briefly represented by court appointed counsel following his arraignment on June 3, 2013, defendant has been represented by retained counsel from October 17, 2013 through the present.¹ Defendant now requests that he be granted *in forma pauperis* relief to appeal his conviction.

¹ Pursuant to Federal Rule of Appellate Procedure 24(a)(3), “[a] party who was permitted to proceed in forma pauperis in the district-court action . . . may proceed on appeal in forma pauperis without further authorization.”

“The decision of whether to grant a request to proceed *in forma pauperis* is left to the District Court’s discretion under 28 U.S.C. § 1915.” *Fridman v. City of New York*, 195 F. Supp. 2d 534, 536 (S.D.N.Y. 2002) (emphasis added). “The application, to be made to the District Court in which the defendant was convicted, must conform to the requirements of 28 U.S.C. § 1915(a), 28 U.S.C.A. § 1915(a) and include, in affidavit form, the defendant’s representations of poverty, a statement of the case, and his belief that he is entitled to redress. The sole statutory language by which the District Court is guided in passing upon the application provides ‘(a)n appeal may not be taken *in forma pauperis* if the trial court certifies in writing that it is not taken in good faith.’” *Coppedge v. United States*, 369 U.S. 438, 443–44 (1962) (footnote omitted) (emphasis added). “The standard for ‘good faith’ in pursuing an appeal is an objective one.” *United States v. Yu*, 90 Cr. 47–6, 2007 WL 62789, at *2 (S.D.N.Y. Jan. 8, 2007) (denying *in forma pauperis* status where appeal not taken in good faith) (citing *Coppedge*, 369 U.S. at 445 (“We consider a defendant’s good faith . . . demonstrated when he seeks appellate review of any issue not frivolous.”)).

An application to proceed *in forma pauperis* must state “the issues that the party intends to present on appeal.” Fed. R. App. P. 24(a)(1)(C); 28 U.S.C. § 1915. This requirement has been strictly applied where it “hinders the district court’s task of determining whether an appeal is taken ‘in good faith.’” *Frias v. United States*, Nos. 09 Civ. 2537, 01 Cr. 307, 2011 WL 832903, at *2 (S.D.N.Y. Mar. 4, 2011).

However, the Rule provides that the district court can find that “the appeal is not taken in good faith or . . . that the party is not otherwise entitled to proceed *in forma pauperis*.” *Id.* Here, defendant has been represented by retained counsel for more than two years, and thus, the Court does not find it appropriate to allow him to proceed *in forma pauperis* based on the former approval.

Because defendant has failed to state the issues that he wishes to appeal and to submit the other information required by 28 U.S.C. § 1915 and Federal Rule of Appellate Procedure 24, the Court is unable to determine whether his appeal is taken “in good faith.” Fed. R. App. P. 24.

For the reasons stated above, defendant’s motion to proceed *in forma pauperis* is denied without prejudice to renew.

SO ORDERED.

Dated: Brooklyn, New York
January 28, 2016

Roslynn R. Mauskopf

ROSLYNN R. MAUSKOPF
United States District Judge